Acme Building Maintenance Co., Inc. *and* Service Employees Union, Local 87, Service Employees International Union, AFL–CIO. Cases 20–CA–23666 and 20–CA–23889

April 29, 1992

ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND REMANDING

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

Upon charges filed by the Union, Service Employees Union, Local 87, Service Employees International Union, AFL–CIO, the General Counsel of the National Labor Relations Board issued complaints on November 23, 1990, and April 29, 1991,[1] against Acme Building Maintenance Co., Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act.

Copies of the charges and complaints were properly served on the Respondent. On August 21 and September 20, 1991, the Respondent sent the Region letters in response to the complaints.

On November 22, 1991, the General Counsel filed a Motion for Summary Judgment, with attached exhibits. On November 27, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. After securing an extension of time from the Board, the Respondent filed a response to the Notice to Show Cause on December 19. On January 2, 1992, the General Counsel filed a brief opposing the Respondent's response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

According to the Motion for Summary Judgment and its attached exhibits, the November 23, 1990 complaint in Case 20–CA–23666 was duly served on the Respondent alleging that it unlawfully interrogated employees, created the impression of surveillance, threatened employees with unspecified reprisals because of their union activities, threatened employees with discharge, discharged Jose Oscar Hernandez, and imposed more onerous working conditions on employees including Alejo Santiago and Genaro Gonzales. On May 1, the Respondent was served with a copy of the complaint in Case 20–CA–23889 alleging that it imposed more onerous working conditions on Alejo Santiago by increasing his workload, and that it unlawfully threw away union flyers.[2]

On June 13, 1991, the Acting Regional Attorney for Region 20 notified the Respondent that if an answer to each complaint was not filed with the Region by June 20, summary judgment would be sought. On June 24, the Region again advised the Respondent that a Motion for Summary Judgment would be filed with the Board. On August 16, the Regional Director for Region 20 wrote the Respondent that if an answer was not received to each complaint by August 23, summary judgment would be sought.

On August 21, the Respondent's general manager, Richard H. Sanchez, wrote the Regional Director stating, inter alia, that he had met several times with the Union in an effort to settle the Union's claims against it. Sanchez additionally wrote that ''[a]t no time did [the Respondent's supervisor][3] interrogate, threaten, or otherwise show hostility towards employees who may have been interested in joining Local 87.'' Finally, Sanchez asked to meet with the Regional Director and complaining parties to ascertain what the Respondent's supervisor allegedly did.

On September 20, General Manager Sanchez again wrote the Region stating, inter alia, that ''[w]e have never terminated or increased the workload of any employee working for Acme based on union involvement.''[4] Apparently attached to the September 20 letter was a November 1990 report detailing the circumstances under which Jose Oscar Hernandez left the Respondent.

On September 26, the Region wrote the Respondent, detailing the requirements of Section 102.20 of the Board's Rules and Regulations,[5] and stating that the Respondent's August 21 letter failed to adequately answer the complaints. The Region advised the Respondent that ''if your Answer to each Complaint, in accordance with Section 102.20, is not received in this office by October 3, 1991, a Motion for Summary Judgment will be filed with the Board.'' The Region further invited the Respondent to schedule an appointment with the Region to discuss Cases 20–CA–23666 and 20–CA–23889, but said that this would not relieve the Respondent of the obligation to file timely answers. The Respondent did not respond to this letter.

In its response to the Notice to Show Cause, the Respondent argues that it was not represented by counsel when it filed its August 21 and September 20 letters

[1] All dates are in 1991 unless noted.

[2] On April 29, the Regional Director consolidated Cases 20–CA–23666 and 20–CA–23889 for hearing.

[3] The complaint in Case 20–CA–23666 alleged that two supervisors of the Respondent restrained and coerced employees in violation of Sec. 8(a)(1). The Respondent's August 21 letter refers to only one of these supervisors.

[4] As discussed infra, the Region denies receiving Sanchez' September 20 letter. In evaluating the General Counsel's Motion for Summary Judgment, however, we will consider the evidence in the light most favorable to the Respondent and treat this letter as having been timely submitted to the Region.

[5] Sec. 102.20 of the Board's Rules and Regulations provides that allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Sec. 102.21 requires that the answer be filed with the Region and served on the other parties.

with the Region. The Respondent claims that these two letters constitute adequate answers because they specifically deny the material allegations in the complaints, and impliedly deny the remaining complaint allegations. *M. J. McNally Inc*., 302 NLRB 120 (1991).

Counsel for the General Counsel opposes the Respondent's arguments, asserting that the Region has no record of receiving the September 20 letter. The General Counsel further maintains that the August 21 and September 20 letters do not comport with the requirements of the Board's Rules and Regulations that they be served on the parties; nor do they specifically admit, deny, or explain each complaint allegation. *Apple Jack Mining Corp*., 294 NLRB 293 (1989). Finally, counsel for the General Counsel contends that the Respondent's reliance on the letters to answer the complaints is a post hoc rationalization adopted in response to the Notice to Show Cause. *Odaly's Management Corp*., 292 NLRB 1283, 1284 (1989).

The Board, having duly considered the matter, finds that summary judgment is not appropriate here. The Respondent's August 21 pro se letter specifically denies certain 8(a)(1) conduct alleged in the November 23 complaint. The September 20 pro se letter from the Respondent's general manager further denies the 8(a)(3) complaint allegations that the Respondent unlawfully terminated employees or increased their workload because of their union activities. Although the letters did not respond to each and every allegation of the complaints, they did respond to most of the allegations, including the 8(a)(3) allegations.[6]

Based on the above, we conclude that the Motion for Summary Judgment should be denied.[7]

IT IS ORDERED that the General Counsel's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that this case is remanded to the Regional Director for Region 20 for further appropriate action.

[6] Although the Respondent's letters were not served on the Charging Party, we note that they were filed pro se. See generally *M. J. McNally, Inc*., supra.

[7] We believe that *Odaly's* is distinguishable on its facts. In that case, the letter which was claimed to be an answer was sent before the complaint was issued. After the General Counsel notified the respondent that an answer to the complaint was required, the respondent failed to file anything in response. By contrast, in the instant case, the Respondent has filed responses to the complaints.